In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1061

WALTER D. TEAGUE III, ET AL., PETITIONERS

v.

REGIONAL COMMISSIONER OF CUSTOMS, REGION II, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

The judgments of the court of appeals were entered on November 14, 1968. As petitioners recognize in their Supplemental Brief, the time permitted for the filing of the petition or of a motion for extension of time in which to file the petition expired February 12, 1969, ninety days after judgment. 28 U.S.C 2101(c); Supreme Court Rule 34(2). However, the petition for a writ of certiorari was not filed until February 14, 1969, two days after the time had expired, and no extension was timely requested. As this time require-

336-295—69——1

ment is jurisdictional, the petition for a writ of certiorari should be denied as untimely.[1]

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1969.

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[1] Petitioners urge that they should be excused because of *force majeure*. Even if such a plea might be entertained in an appropriate case, this is not such a case. The intensity of the snow storm alleged to be the cause of the late filing was apparent on the morning of February 10, before the briefs were deposited at the Post Office. New York Times, February 10, 1969, p. 1, cols. 6, 7, 8 (Late City Ed.). Its lingering effects on city services, including the mails and transportation, were widely publicized. New York Times, February 1 1969, p. 1, cols. 5–6 (City Ed.). Petitioners could have sent additional copies for filing by rail (*ibid.*), or petitioned this Court by telegraph or through Washington counsel for an extension of time in which to file in light of the extraordinary circumstances. Petitioners were thus able to remedy their problem in a timely manner, but they failed to do so.

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